STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs. Case No. 2006-0571-FH

ANGELA JOLEEN NASH,

Defendant.
_____/

OPINION AND ORDER

Defendant has filed a motion to sever.

Defendant was charged with accosting a child for immoral purposes, contrary to MCL 750.145a, and contributing to the delinquency of a minor, contrary to MCL 750.145. Defendant waived her preliminary examination, and was bound over for trial by the Hon. Sebastian Lucido, Judge of 41-B District Court. Defendant's trial is scheduled to be joined with that of co-defendant William T. McCleese, who is charged with several counts of third degree criminal sexual conduct involving a person from 13-15 years old, contrary to MCL 750.520d(1)(a), in Case Nos. 2006-0204-FH and 2006-0510-FH. Defendant now brings this motion to sever pursuant to MCR 6.121(B).

A trial court's determination of whether offenses are "related" within the meaning of MCR 6.120(B) is a question of law which is reviewed de novo. *People v Girard*, 269 Mich App 15, 17; 709 NW2d 222 (2005) (citation omitted). The court's ultimate ruling on a motion to sever is reviewed for abuse of discretion. *Id.* (citation omitted).

In support of her motion to sever, defendant claims that the offenses with which she is charged are unrelated to the offenses with which co-defendant McCleese is charged. Defendant notes that severance of unrelated charges is mandatory, and therefore urges the Court to order separate trials in this matter.

Joinder of defendants in a single trial is appropriate if the offenses are related. MCR 6.120(B). Offenses are related if they are based on the same conduct or transaction, a series of connected acts, or a series of acts constituting parts of a single scheme or plan. MCR 6.120(B)(1). "'A series of acts connected together' refers to multiple offenses committed 'to aid in accomplishing another, as with burglary and larceny or kidnapping and robbery.'" *People v Tobey*, 401 Mich 141, 151; 257 NW2d 537 (1977) (citations omitted). A court "must sever offenses that are not related as defined in MCR 6.120(B)." MCR 6.121(B).

In the case at bar, the offenses with which defendant and co-defendant McCleese are charged constitute a series of connected acts within the meaning of MCR 6.120(B)(1). According to testimony presented during the preliminary examinations of co-defendant McCleese, defendant accosted complainant for immoral purposes and contributed to her delinquency by encouraging her to prostitute herself and remit half of the funds she received to defendant. Specifically, defendant allegedly encouraged complainant to have intercourse with co-defendant McCleese. Further, defendant allegedly furnished complainant with the use of her house for this purpose. As such, the Court is satisfied that the charges against defendant and co-defendant are "related" pursuant to MCR 6.121(B).[1]

[1] The Court notes that defendant has not argued that severance is necessary to avoid prejudice to her substantial rights or on the grounds that it is appropriate to promote fairness to the parties. Nevertheless, the Court shall briefly address these issues. Upon "defendant's motion, the court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant." MCR 6.121(C). However, severance under this court rule is required "only when defendant provides the court with a supporting affidavit, or makes an offer of proof, that clearly, affirmatively, and fully demonstrates that his substantial rights will

For the reasons set forth above, defendant's motion for severance is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order does not resolve the last pending claim or close the case.

IT IS SO ORDERED.

Diane M. Druzinski, Circuit Court

Date: MAY 11 2006

DMD/aac

cc: Rebecca Oster, Asst. Prosecuting Attorney
Kenneth Karam, Esq.

DIANE M. DRUZINSKI
CIRCUIT JUDGE

MAY 11 2006

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BY: _____ DEPUTY CLERK

be will prejudiced and that severance is the necessary means of rectifying the potential prejudice." *People v Hana*, 447 Mich 325, 346-347; 524 NW2d 682 (1994). In the present case, defendant has provided the Court with no such affidavit or offer of proof, and the Court is therefore satisfied that severance is not warranted under MCR 6.121(C). The Court may also order severance "on the ground that severance is appropriate to promote fairness to the parties and a fair determination of the guilt or innocence of one or more of the defendants." MCR 6.121(D). However, the Court believes that there is very little potential for confusion or prejudice in this matter, and the Court finds that severance is not appropriate pursuant to MCR 6.121(D).

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JULIE A. THOMPSON,

Plaintiff,

vs. Case No. 2005-6646-DO

KENNETH J. THOMPSON,

Defendant.
_____/

OPINION AND ORDER

Defendant moves for reconsideration.

Plaintiff filed her complaint for divorce on November 7, 2005. The parties were married on September 11, 1997, and there were no children born of the marriage. A default judgment of divorce was entered on February 7, 2006. Defendant moved to set aside the default judgment of divorce on March 17, 2006. On April 3, 2006, the Court heard the matter. The Court issued an order denying defendant's motion to set aside the default, and amending the judgment of divorce to provide that while plaintiff is eligible for health insurance coverage pursuant to COBRA, said benefits shall be at her sole expense. Defendant now moves for reconsideration.

Defendant maintains that the default judgment of divorce is not equitable in nature as to the property rights of defendant, and as to all aspects including, but not limited to, the division of person property, as well as spousal support. Defendant contends that notice of the entry of the default was never given as required by MCR 2.603(A)(2). Further, defendant avers he was scheduled for surgery on the day of the hearing, thereby constituting good cause for setting aside the default. Defendant further contends that setting aside the default judgment will not result in any prejudice to plaintiff. By affidavit, defendant asserts that after initially receiving the

complaint, plaintiff told him the parties could settle the matter as a no contest divorce. Defendant swears he never received a letter from plaintiff's attorney indicating a default judgment would be taken against him. Again, defendant asserts he had surgery scheduled on the date of the hearing, which his wife knew. Defendant contends that he was not personally served a copy of the notice of hearing, and he did not receive a copy in the mail. Defendant surmises that because he co-habitated with his wife at the time, she must have intercepted any notice of hearing.

Defendant also contends the default judgment is inequitable for a variety of reasons. First, defendant argues, he purchased the marital home in 1997, and made improvements on it, yet he received none of the equity in the home. Second, defendant suggests it is inequitable that plaintiff received all of the household furniture and furnishings valued at approximately $12,000. Third, defendant submits it is unfair that plaintiff received spousal support for a year and COBRA payments. In this regard, defendant contends this was only a six-year marriage, and plaintiff made approximately $35,000 in a good year. Fourth, defendant contends that the default judgment of divorce makes him responsible for one-half of a balance on a Standard Federal Loan in the amount of $1500, which he has no knowledge of. Defendant maintains he is on temporary disability and is simply not able to meet the obligations as required by the judgment of divorce. Defendant also notes that with his disability he is unable to comply with the mandates of the default judgment to remove his belongings within the 15-day time period specified. Finally, defendant asserts that the parties had sought fertility treatments, which cost $25,000, paid for by refinancing the marital home. Defendant notes that plaintiff makes approximately $20,000, has an associates degree, and is ten years younger than he is, while

defendant is 49 years old, has a high school diploma, and has been told he will need total shoulder replacement, cutting short his future in working as a certified welder.

Although plaintiff has not responded to the present motion for reconsideration, the Court notes that in response to defendant's motion to set aside the default judgment, plaintiff pointed out that defendant sought legal assistance by an attorney on November 22, 2005, and was informed of the process of divorce proceedings. Plaintiff attached a copy of a letter from Attorney Malmgren, setting forth that the complaint must be answered or a default judgment may issue. Plaintiff further asserted that while the parties' cohabited for a short period of time, defendant eventually moved to an unknown location, to which he had his mail forwarded. Plaintiff denies intercepting mail, and plaintiff counsel stated in the response brief that no mail was ever returned to his office. Plaintiff further alleged that defendant cancelled his surgery twice, re-scheduling for the date of the hearing, and that he knew of the hearing. Plaintiff contended defendant failed to take any action on his own behalf, and that he never requested an adjournment. Plaintiff further asserted that the property distribution was fair.

Motions for reconsideration are provided for at MCR 2.119. A motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion. MCR 2.119(F). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show a different disposition of the motion must result from correction of the error. A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise by subject to correction on appeal but at a much greater expense

to the parties. *Bers* v *Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole* v *Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

A trial court's decision whether to set aside a default judgment for a clear abuse of discretion. *Marposs Corp v Autocam Corp,* 183 Mich App 166, 170-171; 454 NW2d 194 (1990); *Perry v. Perry,* 176 Mich App 762, 768-769; 440 NW2d 93 (1989). The purpose of the notice requirement of MCR 2.603(B)(1) is to apprise the defaulting party of the possibility of entry of judgment so that the party has an opportunity to participate in any hearing necessary to ascertain the proper remedy. *Perry, supra* at 767. A default judgment may be set aside only where (1) good cause for failure to make a timely response is shown, (2) a meritorious defense is established, and (3) the showing of a meritorious defense is based on an affidavit of fact. *Perry*, 769. Good cause sufficient to justify setting aside a default judgment includes, inter alia, a substantial defect or irregularity in the proceedings on which the default is based. *Perry*, 769.

First, the Court notes that defendant presents the same arguments at this time as he raised previously in the motion, and therefore reconsideration is not proper. Second, the Court remains persuaded that defendant did not show good cause for failure to make a timely response. Defendant admitted at the hearing that he picked up the initial divorce pleadings at plaintiff's counsel's office, and signed an acknowledgment of same. Defendant was aware that he needed to file an answer and respond to the instant matter, but failed to do so. Regarding notice of the default judgment hearing, defendant admitted that while he moved out in January of 2006, he continues to receive mail addressed to the marital home, which is then forwarded to his current address. Plaintiff testified that on January 25, 2006, a search warrant was executed on the home. After that time, plaintiff stated, she taped defendant's mail to the garage door for her safety,

rather than continue to bring the mail into her portion of the home for defendant's retrieval. The Court remains persuaded that service was appropriate under the circumstances. Defendant does not deny that he knew that he needed to answer, and that failure to do so could result in a default judgment. Defendant offered no reason for his failure to timely respond in this case.

Moreover, the Court remains persuaded that there is no meritorious defense, in light of the parties' prior agreement at the hearing to amend the judgment of divorce to reflect that plaintiff relinquished the COBRA division in the judgment. The Court remains persuaded that the remainder of the division of property is fair and equitable.

For the foregoing reasons, defendant's motion for reconsideration is DENIED. In compliance with MCR 2.602(A)(3), the Court states this case had been resolved previously and remains CLOSED.

IT IS SO ORDERED.

TRACEY A. YOKICH
CIRCUIT JUDGE

Tracey A. Yokich
Circuit Judge – Family Division

MAY 15 2006

DATED: May 15, 2006

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BY: _____ Court Clerk

cc: Jacob Michael Femminineo, Jr., attorney for plaintiff
David Grant Mapley, attorney for defendant